

Illegals in our Midst: Getting Policy Exactly Wrong

by

Jagdish Bhagwati

Jagdish Bhagwati is the Arthur Lehman Professor of Economics and Professor of Political Science at Columbia University. He has been writing about immigration questions since the 1960s.

Professor Owen Fiss makes my day. For some years now, in a series of essays, book reviews and op.ed. articles,¹ I have argued for an immigration policy that would shift enforcement to the border while effectively reducing, or at least freezing, the current level of internal enforcement aimed at punishing employers of illegals (via employer sanctions) and the illegals themselves (via ID cards, INS raids with a view to detection, detention and deportation, et.al.).

In challenging the bipartisan consensus on the issue, which had moved increasingly in the opposite, in my view exactly the wrong, direction by zeroing in on the illegals already in our midst, not just through punishments but even (for many) by denial of access to social benefits assured to all Americans, I knew that I was virtually alone. But I remained optimistic that I would not be lonely for too long. Frankly, however, I had expected my fellow economists and political scientists to move in my direction. Instead, Professor Fiss brings constitutional law to bear on the issue, lending me wholly unforeseen and therefore entirely welcome support.

Policy on Illegal Immigration: Two Objectives

Enlightened Americans broadly share two principal objectives in their conception of an appropriate policy towards illegal immigration: First, we should reduce the illegal inflow; second, we want to treat those who are within our midst, whether native or naturalized or alien, with a measure of decency that we feel and believe is owed by each of us to others within the community: this fundamental good sense defines our obligations as much as their rights.

The first objective is typical of nearly all societies: borders are typically defined to exclude and borders out of control simply do not sit well with the body politic. But the second

¹ Several of these have been reprinted in my latest book, A Stream of Windows: Unsettling Reflections on Trade, Immigration and Democracy, MIT Press: Cambridge, 1998. See especially Chapters 31-34 and 39.

objective, I submit, is uniquely American, at least in intensity since other post-Renaissance societies also exhibit elements of it but rarely with our passion and consistency.

The reasons for our uniqueness here are clearly our lack of history in the sense of an identity defined by shared memories that define “us” against “others”, as also the history of immigration that defines a culture that prides itself on the principle of possibility for each and all. In fact, our sensibility is offended at its core when we contemplate that any group, any individual, is denied fair access to the opportunities that our country offers.² The notion that we can thus live with an underclass of humanity in our midst, denied access to social benefits and economic betterment simply because they are illegal aliens, violates the essence of what defines our sense of decency and morality.³

In this regard, I have been struck particularly by a possible parallel between the way we wish to treat equally well all in our midst, and the absence in our culture of the Cinderella complex, the differentially advantaged treatment of one’s natural over that of one’s adopted or acquired children. I hazard the view, based on my casual observation of other cultures, that there is no particular opprobrium there in discriminating in favor of one’s natural children, whereas in our culture, this is simply beyond the pale: all children, once in one’s charge, are the same.

² Yes, there are serious lapses, especially in regard to blacks. But here too, the strength of the civil rights movement, and our ability to make steady if inadequate progress towards equality of access to the black community, are reflections of what I argue in the text. So is the fact that, when seized by panic over the rise of Japan in world trade, the Europeans simply erected significant barriers against them without any angst whatsoever whereas we had to go through a song and dance about how “unfair” the Japanese were in trade, thus first convincing ourselves that if we were to strike the Japanese with trade sanctions and barriers, it was a “fair” move on our part! On the Japan question, and how we handled it as described, see again my book A Stream of Windows, op.cit., especially chapters 14-16 and 18-21.

³ This sentiment surfaces in a much weaker sense in other civilized societies, simply because it is difficult to come down hard on hapless humanity. I have often cited a telling quote from the Swiss novelist Max Frisch who, on observing how West Europeans found it extremely difficult to send home the gastarbeiters (guestworkers) even

The Wrongheaded Approach of our Early Legislation

Our legislators have typically tried to achieve these twin objectives by eliminating the illegals in our midst: the first objective having been fully achieved, the second followed as well since you could not ill-treat illegals if there were none! Towards that end, the stock of illegals was sought to be removed under the 1986 legislation on illegal immigration through the amnesty. And, the flow of illegals was sought to be eliminated by enhanced domestic enforcement in the shape of employer sanctions: this would reduce the magnet that US jobs would provide.

Predictably, amnesty left many still in illegal status. More important, there was no way that employer sanctions could work to reduce the flow. Even in Germany and Switzerland, the GAO had warned, these had proven difficult to enforce since few judges would impose the necessary penalties against employers whose only sin was hiring (as against ill-treating and exploiting) the illegals. Our civil liberties traditions and groups being even more acute and impassioned, the problem of enforcement was even worse. Besides, the difference in prospects at home and in the US are so vast that no dent could be made in the incentive to attempt illegal entry by methods such as these.

In effect, then, the illegals continued in our midst, with little change in the attempted entries: the first objective was hardly advanced. At the same time, the INS harassment increased with the enhanced domestic enforcement: the result was to push yet more of the illegals into the underclass. So, the second objective was even set back! The 1986 consensus on policy had been just terribly wrong!⁴

though they had been brought in on the explicit understanding that they could be sent back, remarked: “we imported workers and got men instead.”

The Current Follies

The answer therefore must be to turn the policy on its head. Try to control immigration at the border: this also will not work too well since more than half the illegals are now estimated to come across in difficult-to-monitor ways other than crossing the Rio Grande. But such enforcement will produce the satisfaction, at low cost, that “we are trying to control the influx”. Then, once the illegals are in, leave them alone, more rather than less. And treat them like us, enjoying our social and economic rights.

But instead, we have again worked ourselves up into a frenzy, seeking ever more domestic enforcement! In addition to the punishment mode of employer sanctions, there have also been increasing demands to deny the illegals (even legals at times) access to social benefits in the tired and false expectation that these policies will significantly reduce the incentive for attempted entries. So, we see the prospect of more domestic enforcement that will do little to reduce illegal inflows and much to drive the illegals into an underclass that degrades them and offends our moral sensibilities while also violating the constitution if Professor Fiss is right.

An Unholy Confluence: The Pete Wilson Problem and the “Harvard Square” School

In this drift to the brink, two recent developments have played a major role. First, whether Pete Wilson was also motivated by an animus against illegals or by low politics pandering to his constituents’ animus, there is no question that he had a fiscal problem on his hands just the way other states like Texas and Florida have. This comes from the fact, well documented in immigration studies, that while the illegal immigrants create a net if mild overall fiscal surplus, there is a distributional problem: states lose revenue net while the federal government gains. Reflective of this problem are the expenditures on education which were in

⁴ This is just what I had anticipated; see my Wall Street Journal article of February 1, 1985, reprinted as Chapter 33

contention in the Plyler v. Doe case. From the viewpoint of strategic politics, one may then view the legislative attempts at the state level to exclude illegals from social benefits, specially those that would outrage our moral sense, as a way of bringing the federal government's fiscal responsibility to assist these states to center stage. When immigration policy is a federal matter, I should imagine that we have here a constitutional issue that also bears on the question at hand; but let me leave it at that.

What is far more worrisome is the hugely deleterious intellectual role that has been played by economists, and sociologists, who have turned the illegal immigration "phenomenon" into a "problem" by arguing that first, just because the illegals are typically undereducated and unskilled, they have been a contributory factor in the decline in real wages of our own unskilled since the 1980s, and second, that inner city problems of the black community have been accentuated by the immigrants who have taken the jobs that would otherwise have gone to the natives. As it happens, many of these social scientists are located currently in Cambridge and they can be aptly described as the "Harvard Square" school of naysayers. Among the economists is George Borjas of Kennedy School, whose role as Pete Wilson's adviser has given him media exposure.⁵ Among the sociologists are Orlando Patterson, who has drawn on Borjas's economics to urge President Clinton to take on illegals more strenuously, and Kathleen Newman, now at Kennedy School, whose remarkable work on the inner city problems has correctly emphasized the importance of economic opportunity for blacks but is unfortunately interpreted often as implying a substitutional relationship between blacks and unskilled immigrants in this regard.

in *A Stream of Windows*, op.cit.

⁵ Where Borjas has been arguing that the unskilled immigration has harmed our workers' wages, Dani Rodrik of Kennedy School has recently endorsed the fraternal claim that trade with poor countries has harmed our workers in his pamphlet, *Has Globalization Gone Too Far?*, 1997. I have challenged both assertions in my own recent research.

I have no space to say why these are unconvincing arguments: I and Francisco Rivera-Batiz are just finishing a book entitled: In the Eye of the Storm: Targeting Illegal Aliens, where we refute these alarming contentions at both conceptual and empirical levels.

But I may add that many of these intellectuals have been led to the non sequitur that we must encourage skilled at the expense of the unskilled migrants. This is a reactionary proposal, if there ever was one, that is not merely economically indefensible (since it is impossible to make a convincing case that the skilled migrants will produce greater externalities for us than the unskilled ones will) but also violates our deepest moral sense. For, just imagine that we had one place for an immigrant and we asked an average American: you can give this place to a rich doctor from India or to an impoverished peasant from Haiti, and you are to vote entirely on the basis of whom you wish to assist and not a whit on which immigrant will do you good, which one would you choose? I have little doubt that the impoverished peasant would be the one chosen. The Statue of Liberty does capture that essential truth about us; and it is that truth which is obscured by focus in the scholarly debate on what is materially good for us and by the unconvincing economics that often supports the alarmist views.